

# Export Control at NASA

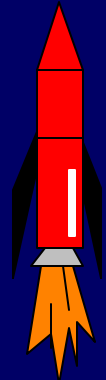
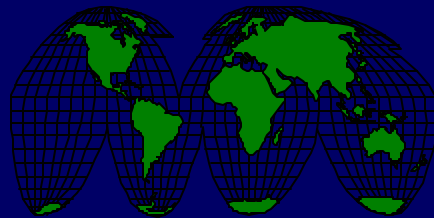
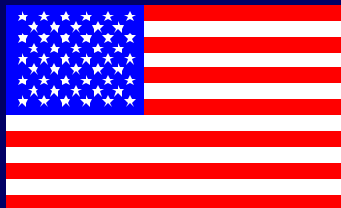
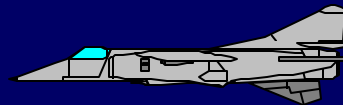
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Presentation to Small Explorer Program

Kick-off Meeting

University of Maryland Conference Center

1 May 2001



# WELCOME EXPORTERS



**We're From *Washington* and  
We're Here to Help You!**

A thick, horizontal yellow brushstroke that spans the width of the slide, positioned directly beneath the main text.

**REALLY**

# A Little Up Front Warning

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- We're the first to acknowledge *this is not fun stuff*
- This session is not going to make you an expert
- The subject is dry and dull
- It is a pain
- However . . .

Boeing got religion on their SeaLaunch Program (they were completely shut down and suffered a \$10M fine for violations) and the State Department recently sanctioned McDonnell Douglas

- So, if you are involved in NASA's international sandbox you need to be aware of, and sensitive to, this subject.

AS WE GO THROUGH THIS  
PRESENTATION, REMEMBER YOU ARE  
IN THE EXPORT CONTROL PICTURE  
SINCE ...

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**“YOU” ARE THE  
MOST LIKELY  
EXPORTER**

# Agenda

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- Overview: *Some Basic Principles*
- The NASA Export Control Program
- The International Traffic in Arms Regulations
- The Export Administration Regulations
- Summary, For More Information



**New BMW 7 series sedan:**

**\$45,000**

**4-inch Hose line:**

**\$ 425**

**Breaking the windows and flooding the interior  
of this idiot's new car -- with police assistance:**

**Priceless**

# OVERVIEW:

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## *Some Basic Principles*

**John F. Hall, Jr.**

**Manager, International  
Technology Transfer Policy  
& NASA Export Administrator**



# Here's an important principle: *Export Control Violations are Federal Crimes*

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## ■ Protect Yourself: The Export Laws and Regulations Have Teeth and Can “Bite”

### ■ ITAR Criminal and Civil Penalties

- | Fine of up to \$1 million per violation
- | Imprisonment - 10 years per violation

### ■ EAR Criminal and Civil Penalties

- | Fine of \$100K+
- | Imprisonment for up to 10 years

## ■ That's one reason why You need to be concerned about Your export practices

# What is an “Export”?

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- An Export Is...
- the transfer of anything to a “FOREIGN PERSON” (or a foreign destination) by any means, anywhere, anytime, *or* a transfer to a “U.S. PERSON” with knowledge that the item will be further transferred to a “FOREIGN PERSON”.

# Therefore, it's all of the following and more:

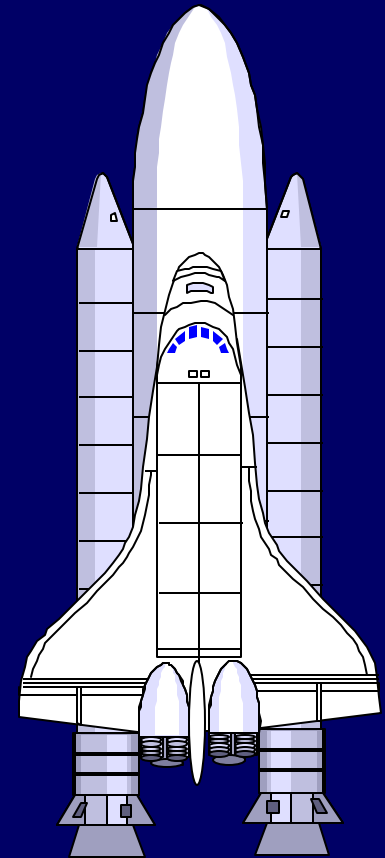
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- Placing information on the World-Wide-Web, making data available through ftp sites, etc.
- Placing information in the Public Domain
- Verbal discussions w/foreign nationals or presentations to groups that include foreign nationals
- Handcarrying items outside the U.S.
- Traditional “Shipments” of items outside the U.S.
- Mailing, faxing, e-mailing items outside the U.S. or to foreign nationals within the U.S.
- etc., etc.

# Why are exports controlled?

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- National Security (NS)
- Foreign Policy (FP)
- Proliferation (MT, NP, CB)
- Short Supply



# **Only Certain Exports Are Subject to Controls**

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- **This Presentation is geared to Assist You in telling the difference; and**
- **Assisting You in determining which exports require prior approval from State or Commerce via a License**
- **However, we're not going to make you experts in the next 30 minutes**

# Public Domain v. Export Controlled

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- Data in the Public Domain is “uncontrolled” and “unlimited” dissemination\*
- Items subject to Export Control are restricted in their dissemination
  - May require a license
  - May be eligible for a license exception/exemption
- Just because it's COTS does not mean it's not export-controlled

# Export Control Definitions

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## ■ Technical Data -

- | **information** which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of “**defense articles**”
- | **classified** information related to “**defense articles**”
- | **information** covered by an invention secrecy order
- | **software** directly related to “**defense articles**”.

22 CFR § 120.10

# Export Control Definitions

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## ■ Technical Data (cont'd) -

- | does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the “public domain”.
- | does not include basic marketing information on function or purpose or general system descriptions of “Defense Articles”.



# Export Control Definitions

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## ■ **Public Domain** - information which is published and which is generally accessible or available to the public:

- | through sales at newsstands and bookstores;
- | through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information;
- | through second class mailing privileges granted by the U.S. government

22 CFR § 120.11

# Export Control Definitions

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## ■ Public Domain (cont'd)

- | at libraries open to the public or from which the public can obtain documents;
- | through patents available at any patent office
- | through unlimited distribution at a conference, meeting, seminar, trade show or exhibition,, generally accessible to the public, in the United States;

# Export Control Definitions

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## ■ Public Domain (cont'd)

- | through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant U.S. government department or agency.
- | through **fundamental research** in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community.

# Export Control Definitions

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## ■ Public Domain (cont'd)

- | Fundamental research is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. government access and dissemination controls.

# Export Control Definitions

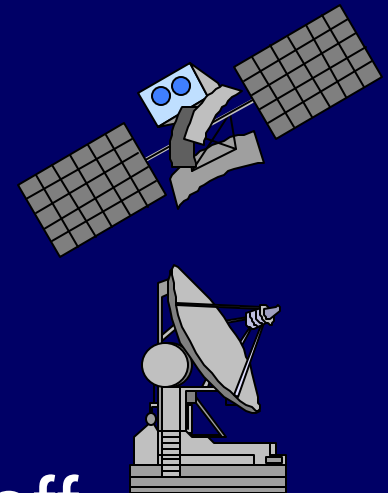
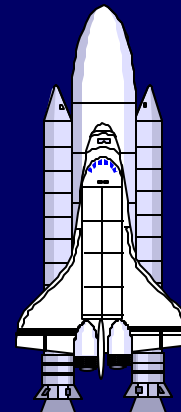
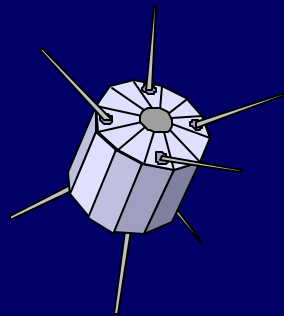
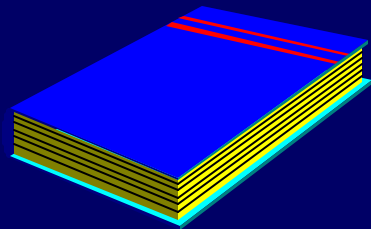
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## ■ Public Domain (cont'd)

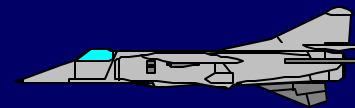
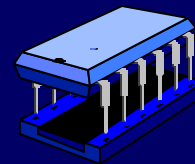
- | University research will *not* be considered “fundamental research” if:
  - the University or its researchers **accept other restrictions on publication of scientific and technical information resulting from the project or activity, or**
  - **the research is funded by the U.S. government and specific access and dissemination controls protecting information resulting from the research are applicable.**

# The NASA Export Control Program

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Presentation to SMEX Kick-off  
Meeting  
1 May 2001



# NATIONAL AERONAUTICS AND SPACE ACT OF 1958, AS AMENDED

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- "The Administration shall provide for the widest practicable and appropriate dissemination of information concerning it's activities and the results thereof"
- and appropriate

# ADMINISTRATOR'S EXPORT CONTROL POLICY STATEMENT

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- "As a U.S. Government Agency on the forefront of technological development and international cooperation in the fields of space, aeronautics, and science, the National Aeronautics and Space Administration will strive to fulfill its mission for cooperative international research and civil space development in harmony with the export control laws and regulations of the United States. Due to heightened proliferation challenges facing the United States and the world, including risks posed by the spread of missile technologies and weapons of mass destruction, and in view of the significant criminal, civil, and administrative penalties that may affect the Agency and its employees as a result of a failure to comply with U.S. export control laws and regulations, it is the responsibility of every NASA official and employee to ensure that the export control policies of the United States, including nonproliferation objectives, are fully observed in the pursuit of NASA's international mission."
- Daniel S. Goldin, Administrator
  - National Aeronautics and Space Administration



# Why You Must be Concerned About Your Export Practices

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- Exporting is a “privilege”, *not a “right”*
- Export “privileges” can be revoked, precluding our ability to conduct international activities.
- The US holds significant expertise in space launch vehicle, satellites and other advanced/controlled technologies that others would love to have.
- And don't forget, export control violations can -- and do -- lead to criminal prosecution

# The NASA ECP

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- **Export control responsibilities in NASA**
  - **Export milestones are to be considered/included in program/project planning, as applicable**
  - **Identify export license requirements and obtain same prior to exporting**
  - **Export only those goods and data necessary to fulfill NASA responsibilities under the International Agreement**
  - **Assure the proper training of program/project staff in export control**

# The NASA ECP

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- Export control responsibilities for NASA (cont'd)
  - As applicable, advise contractors of NASA obligations in International Agreements and provide proper authority for any contractor effected exports
  - Assure that foreign partners are advised of the sensitive nature of export controlled goods and data prior to transfer - use Destination Control Statements on shipping paperwork, etc.
  - If warranted by program/project, develop internal Technology Transfer Control Plan (TTCP) - *will be a requirement of new NPG*

# How Do Export Controls Affect Me?

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- Understand the Scope of the International Cooperation and NASA's Responsibilities
- Be Aware and Think before you "export"
- Don't be intimidated by the rules - help is available, ask for it

# NASA's International Agreements

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- **NASA's International Agreements - the basis for NASA foreign cooperative activity**
  - define the responsibilities of the parties, scope of the work to be performed, & the terms and conditions under which the cooperation will be effected.
- **All NASA International Agreements contain a clause on transfers of controlled goods and data - in both directions**
- **NASA's International Agreements do NOT trump export control laws & regulations**

# NASA International Agreements

## ■ Exchange of Goods and Data Clause

- The parties are obligated to transfer only those technical data (including software) and goods necessary to fulfill their respective responsibilities under this agreement, in accordance with the following provisions:
  - 1. The transfer of technical data for the purpose of discharging the parties' responsibilities with regard to interface, integration, and safety shall normally be made without restriction, except as required by national laws and regulations relating to export control or the control of classified data. If design, manufacturing, and processing data and associated software, which is proprietary but not export controlled, is necessary for interface, integration, or safety purposes, the transfer shall be made and the data and associated software shall be appropriately marked. Nothing in this article requires the parties to transfer goods or technical data contrary to national laws and regulations relating to export control or control of classified data.
  - 2. All transfers of proprietary technical data and export-controlled goods and technical data are subject to the following provisions. In the event a party finds it necessary to transfer goods which are subject to export control or technical data which is proprietary or subject to export controls, and for which protection is to be maintained, such goods shall be specifically identified and such technical data shall be marked with a notice to indicate that they shall be used and disclosed by the receiving party and its related entities (e.g., contractors and subcontractors) only for the purposes of fulfilling the receiving party's responsibilities under the programs implemented by this agreement, and that the identified goods and marked technical data shall not be disclosed or retransferred to any other entity without the prior written permission of the furnishing party. The receiving party agrees to abide by the terms of the notice, and to protect any such identified goods and marked technical data from unauthorized use and disclosure, and also agrees to obtain these same obligations from its related entities prior to the transfer.
  - 3. All goods, marked proprietary data, and marked or unmarked technical data subject to export control, which are transferred under this agreement, shall be used by the receiving party exclusively for the purposes of the programs implemented by this agreement.

# The NASA Export Control Program

- Export Processing Template - Roadmap to Compliance

